

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2744 of 1996

WITH

SPECIAL CIVIL APPLICATION No 7999 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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YAKUB AHMED VALI PATEL

Versus

DIVISIONAL CONTROLLER, GUJ. STATE ROAD TRANSPORT  
CORPORATION

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Appearance:

In Special Civil Application No 2744 of 1996  
MR HK RATHOD for Petitioner  
MR HS MUNSHAW for Respondent No. 1

In Special Civil Application No 7999 of 1996  
MR HS MUNSHAW for Petitioner-Corporation  
MR HK RATHOD for Respondent

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 06/11/96

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by Mr. H.S.

Munshaw for the Employer-Corporation and by Mr. H.K. Rathod for employee.

2. Since both these petitions arise out of one and common award, upon request they are being disposed of simultaneously.

3. Gujarat State Road Transport Corporation as an employer and disciplinary authority recorded an order of dismissal of services against the workman-conductor by holding a departmental inquiry on the charge of financial irregularities, misappropriation by non-issuance of requisite tickets to the passengers, in connection with an incident which occurred on 19th October, 1984 when the S.T. bus was enroute to Dahod from Surat. The dismissal order was recorded on 10-5-1985 which was challenged by the employee-conductor by filing first appeal before the competent authority of the department which came to be rejected. Second appeal was also filed by the workman before the competent authority of the department which was partly allowed, quashing the order of the dismissal and passing an order of reinstatement with continuity of service and placing the workman delinquent on minimum time-scale of Rs.190/- denying full backwages of the interim period.

4. The order of the Second Appellate Board was questioned by the employee before the Industrial Tribunal, Surat by Reference no.1 of 1988. The Tribunal modified the order of penalty directing to place the workman five steps below in the basic salary of Rs.335/-. It is this award which is under challenge in both the petitions. The Special Civil Application No.2744 of 1996 (first petition) is at the instance of the workman-conductor whereas the Special Civil Application No.7999 of 1996 is at the instance of employer-Corporation.

5. The learned counsel appearing for the workman-petitioner in the first petition has forcefully contended that the impugned order of Industrial Tribunal placing the workman five steps below in the basic scale of Rs.335/- is unjust, perverse and illegal. In that, it is submitted that the Second Appellate Board placed the workman in the scale of Rs.190/- by way of punishment and the punishment recorded by the Industrial Tribunal is one and same in its effect. A comparative statement of the scale before and after order is also relied upon. It is also contended on behalf of the workman that the punishment of stoppage of full backwages of interim period is also harsh and excessive.

6. The learned counsel appearing for the employer-Corporation has submitted with equal vehemence that the order of penalty in the impugned order of the Tribunal is very lenient and liberal in the light of the delinquency proved against the workman. In that, it has been contended that the misconduct committed by the employee is very serious in nature and therefore, the order of reinstatement is inadequate and illegal. It is also argued that the employee-conductor was guilty of financial irregularities and misappropriation and therefore, the reinstatement should not have been ordered on a sensitive post of conductor wherein dealing with cash is inevitable and inherent. Reliance is also placed on the default card. In that, it is submitted that there were 22 irregularities, defaults and incidents of misconduct against the workman-conductor looking to his past record. The irregularities and defaults for which the Corporation took departmental actions 22 times against the conductor are highlighted in a summary produced at annexure 'C' in the second petition. It is further submitted that apart from irregularities in attendance and causing great hardship to the public there are several serious defaults and financial irregularities against the workman-conductor in the past service record. It is in this context, it was vehemently contended that the reinstatement should be quashed disentitling the workman from any retiral benefits for the grave acts of misconduct.

7. The impugned order is recorded by the Industrial Tribunal in exercise of its statutory powers under section 11-A of Industrial Disputes Act, 1947. The Labour court or the Tribunal has jurisdiction and power under section 11-A to substitute its measure of punishment in place of the award made by the employer in its discretion in the light of the facts and circumstances of the case. No doubt, such discretionary, statutory power has to be exercised judiciously and judicially. Section 11-A of the Industrial Disputes Act, 1947 reads as under:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen--

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of

the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely on the materials on record and shall not take any fresh evidence in relation to the matter.

8. It can very well be visualised from the aforesaid provision that the Tribunal has absolute discretion to decide what punishment in the circumstances of each particular case should be met out to the guilty workman. Unless that discretion exercised by the Tribunal is shown to be unjust, perverse or illegal, ordinarily no interference can be made on a writ petition which is essentially under Article 227 of the Constitution of India. There is no case of violation of principles of natural justice nor the case of victimisation. There is no any case of unfair labour practice or malafides.

9. Though prima-facie it can be concluded that there is not much of the difference in terms of money when the order of Second Appellate Board is compared with the impugned award of the Tribunal, it cannot be contended that the exercise of discretion by the Tribunal is wrong, unjust or perverse in the light of the peculiar facts and circumstances obtainable in the present case. The employee was found guilty of serious misconduct of financial irregularities and misappropriation of public money in his capacity as conductor of a public utility. The past record of service of the workman is also indicative of his indulgence in various malpractices, irregularities including financial irregularities. Therefore, there appears to be some substance in the contention of the learned counsel appearing for the employer-Corporation that in a case like one on hand, the delinquent should not have been reinstated. However, the view which is taken by the Tribunal in the impugned award could not be said to be illegal or unjust resulting into manifest injustice only on that count. In other words, simply because a different view could be taken by this

court, it cannot be contended that the view taken in the impugned award by the Tribunal requires interference of this court in a writ petition. Likewise the withholding of backwages and direction of placing to the employee down five steps in the time-scale also in the facts and circumstances of the case cannot be said to be perverse or unjust.

10. Having regard to facts and circumstances emerging from the record of the present case and considering the relevant proposition of law and the ratio laid down by this court in a Division Bench decision in G.S.R.T.C. vs. Kachraji Motiji Parmar, 1993 (1) GLR 302 and Division Bench decision in G.S.R.T.C. vs. N.M. Desai, 1985 GLH 446 and also on a decision in Ahmedabad Municipal Corporation vs. Husainmiya, 1986 (2) GLR 1143, this court is satisfied that there is no fit and appropriate case warranting the interference of this court in an extraordinary, prerogative, equitable, exceptional, discretionary, writ jurisdiction. It may also be stated while dismissing both these petitions that the Apex court in State of Punjab vs. Ram Singh, JT 1992 (4) SC 253 has observed that even single act of corruption is enough for dismissal.

11. In the result, both the petitions are rejected. Rule discharged. Interim relief obviously shall stand vacated.

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